

OFFICIAL

December 19, 2001

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

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GROUP 1600

Re: Application/Control Number: 09/682,249**Restriction Date: 11/20/01****Response Date: 12/19/01****Election to Invention I is hereby respectfully requested with traverse.**

It is recognized that there are two basic criteria for a requirement for restriction between related inventions: (1) the inventions must be distinct as claimed (they must be patentable over each other) and must have separate utility, MPEP 802.01 AND (2) there must be a serious burden on the examiner if the restriction is not required. According to MPEP 803, BOTH criteria must be satisfied for a proper requirement.

The invention claimed is drawn specifically to a non-endocrine disrupting, cytoprotective, immune enhancing sunblock composition and method of making the composition. The invention claimed does not possess a separate utility.

Specifically the novel sunblock would be used to protect mammalian skin from UV radiation, enhancing immunocompetency while ensuring that no known or suspected endocrines are included in the sunblock composition. While it is true that Group II includes the possible use of a colored pigment, this is not a requirement that pertains specifically to a separate utility. The colored pigment is primarily for cosmetic appeal and is not essential to the basic novel criteria of the invention. The utility of each Group is the same in that the invention provides protection of the skin from harmful UV radiation while also enhancing immunocompetency in an identical manner.

In summary, it is hereby respectfully requested that the examiner rejoin the application and proceed to examine this application on the merits of the single inventive concept (non-endocrine disrupting, cytoprotective, immuno-enhancing sunblock).

Please continue to send all correspondence to the address shown above.

Respectively submitted on 12/19/2001;


Guerry L. Grune
Reg. No. 46,745



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,249	08/09/2001	Guerry L. Grune		1874

29439 7590 11/20/2001

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GROUP 1600

EXAMINER

LAMM, MARINA

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 11/20/2001

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~~Please find below and/or attached an Office communication concerning this application or proceeding.~~

Office Action Summary

Applicati n No.

09/682,249

Applli ant(s)

GRUNE, GUERRY L.

Examiner

Marina Lamm

Art Unit

1616

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-27 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-11 and 25-27, drawn to a composition comprising at least one inorganic sunblock, optionally at least one non-endocrine disrupting sunscreen agent, at least one non-endocrine disrupting emollient and an optional oil component and process of making the composition, classified in class 424, subclass 59.
 - II. Claims 12-22, drawn to a method of protecting mammalian skin from UV radiation and enhancing skin immunocompetency comprising topically applying to said skin a UV-protective composition, said composition comprising at least one sunscreen or sunblock active agent, at least one ultramarine pigment, a non-endocrine disruptive, cytoprotective mixture of natural substances, said mixture comprising a glucose-rich mannose-containing oligosaccharide or oligosaccharides obtained from and used with aloe, water and optionally amino acids, vitamins or provitamins, nucleoderivatives and vegetable extracts and wherein said composition is free of any known or suspected endocrine disrupters, classified in class 424, subclass 59.
 - III. Claims 23 and 24, drawn to a method of protecting mammalian skin from UV radiation and enhancing skin immunocompetency comprising topically applying to said skin a UV-protective composition, said composition comprising at least

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one sunscreen or sunblock active agent, a non-endocrine disruptive, cytoprotective mixture of natural substances, said mixture comprising a glucose-rich mannose-containing oligosaccharide or oligosaccharides obtained from and used with aloe, water and optionally amino acids, vitamins or provitamins, nucleoderivatives and vegetable extracts and wherein said composition is free of any known or suspected endocrine disrupters, classified in class 424, subclass 59.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together (i.e. compositions of Group I and compositions recited in claims of Groups II and III are different sun-protective compositions that are used separately) and they have different effects (i.e. the composition recited in claims of Group II contains a colored pigment which imparts a color to the composition and said color substantially disappears during the application to the skin, while the composition of Group I and III are free of said colored pigment).
3. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I or III, restriction for examination purposes as indicated is proper.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541. The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

ml
11/13/01


JOSE G. DEES
SUPERVISORY PATENT EXAMINER

1616

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